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10/789,412	02/27/2004	Bernd Klotz	KLOTZ-3	5250
20151 7590 03/19/2010 HENRY M FEIEREISEN, LLC HENRY M FEIEREISEN 708 THIRD AVENUE SUITE 1501 NEW YORK, NY 10017				
EXAMINER HUSON, MONICA ANNE				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BERND KLOTZ

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Appeal 2009-013486  
Application 10/789,412  
Technology Center 1700

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Decided: March 17, 2010

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Before JEFFREY T. SMITH, LINDA M. GAUDETTE, and  
JEFFREY B. ROBERTSON, *Administrative Patent Judges*.

ROBERTSON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of pending claims 1-6, 12, and 13. (Appeal Brief filed March 19, 2007, (hereinafter "App. Br.") 2.) We have jurisdiction pursuant to 35 U.S.C. § 6(b).<sup>1</sup>

We REVERSE.

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<sup>1</sup> Oral arguments were heard in this appeal on March 10, 2010.

Appellant describes a method for making a molded plastic article. (Spec. [0011].) Claim 1, the only independent claim on appeal, is illustrative and recites:

1. A method of making a molded plastic article, comprising the steps of:
  - closing a cavity of a positive mold by applying a clamping force;
  - fully filling the cavity with plastic material, while maintaining a size of the cavity constant;
  - adding plastic material so as to distend the positive mold in opposition to the clamping force until the cavity of the positive mold expands to reach a defined size for producing a defined article thickness;
  - closing the positive mold until reaching a residual distending opening and molding the plastic material into a plastic article while applying the clamping force to thereby maintain the plastic material compressed; and
  - removing the plastic article.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Machida	US 5,340,528	Aug. 23, 1994
Takeda	US 5,776,407	Jul. 7, 1998
Uchiyama	US 6,328,920 B1	Dec. 11, 2001

The Examiner rejected claims 1, 2, and 4-6 under 35 U.S.C. § 102(b) as being anticipated by Takeda.

The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Takeda in view of Uchiyama.

The Examiner rejected claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Takeda in view of Machida.

In rejecting the claims on appeal, the Examiner found that Takeda discloses closing the mold until reaching a residual distending opening and molding the plastic material into a plastic article while applying a clamping force to compress the plastic material. (Examiner's Answer entered August 21, 2007, (hereinafter "Ans.") 3.)

Appellant contends, *inter alia*, that the Examiner erred in finding that Takeda discloses the compression phase as recited in the appealed claims. Specifically, Appellant argues that the appealed claims require that compression is performed in the presence of a residual distending opening whereas in Takeda, the opening (A3), which the Examiner equated to the residual distending opening, is not present during the compression phase. (App. Br. 6-7.)

## ISSUE

Did the Examiner err in finding that Takeda discloses the compression phase as recited in the claims?

## FINDINGS OF FACT

The record supports the following Findings of Fact (FF) by a preponderance of the evidence.

1. Takeda discloses a molding process including a filling step (Fig. 1), a pressure adjusting step (Fig. 2), a measuring step (Fig. 3), and a compression step (Fig. 4). (Col. 3, ll. 1-25; col. 4, ll. 48-60.)
2. Takeda discloses that in the filling step, an initial opening A1 exists between a base member 38 and a movable plate 46. (Col. 8,

- ll. 4-11; Fig. 1.) Takeda discloses that during the pressure adjusting step the opening is widened to opening A2. (Col. 8, ll. 21-37; Fig. 2.)
3. Takeda discloses that in the measuring step, the opening is reduced to opening A3. (Col. 9, ll. 18-33; compare Figs. 2 and 3.)
4. Takeda discloses that during the compression step, the movable plate 46 and base member 38 are closed until they abut together, where the “amount B of compression is equal to the opening A3 between the base member 38 and the movable plate 46 . . . .” (Col. 9, ll. 34-41; Fig. 4.)

#### PRINCIPLES OF LAW

“To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

#### ANALYSIS

The Examiner stated that “Takeda shows closing the mold until reaching a residual distending opening, therefore meeting the claim, and then continues to close the mold. Appellant[']s claim does not exclude further closing after the residual distending opening is achieved, as Takeda teaches.” (Ans. 5.) The Examiner also stated that “[a]lthough appellant contends that the claim requires molding the article in the presence of the residual distending opening, the examiner cannot find this requirement in the present claims.” (Ans. 5.) However, we agree with Appellant that the Examiner did not fully appreciate that the compression phase in the claim

requires that the residual distending opening remains present. (App. Br. 6.) Specifically, claim 1 recites “closing the positive mold until reaching a residual distending opening and molding the plastic material into a plastic article while applying the clamping force to thereby maintain the plastic material compressed.” (Claim 1, *supra*.) Thus, the claim requires that the residual distending opening is present during the compression phase.

In contrast, Takeda discloses that in the compression step, the opening A3 is closed such that the movable plate 46 and base member 38 abut together. (FF 3 and 4.) Therefore, Takeda fails to disclose the presence of a residual distending opening during the compression step as recited in claim 1. Accordingly, Appellant has identified reversible error in the Examiner’s rejection of claims 1, 2, and 4-6 as being anticipated by Takeda.

Regarding the Examiner’s rejections under 35 U.S.C. § 103(a), Uchiyama and Machida fail to remedy the deficiency in Takeda as discussed above. Therefore, we reverse the Examiner’s rejections of claims 3, 12, and 13 for the same reasons.

#### ORDER

We reverse the Examiner’s decision rejecting claims 1-6, 12, and 13.

#### REVERSED

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